

No. 76-778

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

NATIONAL CLASSIFICATION COMMITTEE, APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.

**On Appeal from the United States District Court
for the District of Columbia**

**MEMORANDUM FOR THE
INTERSTATE COMMERCE COMMISSION**

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This is an appeal from the judgment of a three-judge district court suspending an order of the Interstate Commerce Commission. The Commission submits this memorandum as an appellee pursuant to Rule 10(4) of the Rules of this Court.

STATEMENT

1. In 1970, the National Motor Freight Traffic Association, Inc., on behalf of its motor carrier members, filed with the Commission schedules proposing

to increase the "classification ratings" applicable to the nationwide transportation of truckload ("TL") and less-than-truckload ("LTL") shipments of certain types of passenger automobiles. A classification rating is assigned to a particular commodity on the basis of the commodity's transportation characteristics.¹ The rating is not itself a rate, but it is used in conjunction with a "class tariff" to determine the applicable transportation charge.²

The Department of Defense filed a protest and requested that the Commission suspend the operation of the proposed schedules under Section 216(g) of the Interstate Commerce Act, 49 U.S.C. 316(g), on the ground that the classification rating increases would be unjust and unreasonable. Appellant intervened in support of the proposed increases. The Commission thereafter suspended the schedules and

¹ Among the factors considered, as summarized by the Commission in this case, are: "weight per cubic foot, and value per pound; liability to loss, damage or theft in transit; likelihood of injury to other freight with which it may come in contact; kind of container or package as bearing upon liability or risk; expense of, and care in handling; ratings on analogous articles; fair relation of ratings as between all articles; and competition between articles of different descriptions but largely used for similar purposes" (J.S. App. D11). See *All States Freight, Inc. v. New York, New Haven & Hartford R.R.*, 379 U.S. 343, 345, n.2.

² A "class tariff" lists rates for classes of commodities. Commodities with the same classification rating (i.e., in the same "class") have identical transportation rates for shipments of equal weight between the same two points. Rates in a class tariff apply only in the absence of commodity rates or other specific rates.

instituted an investigation into the lawfulness of the proposed increases.

The Commission subsequently determined, with one exception not pertinent here, that the increases with respect to LTL shipments were just and reasonable and accordingly should be allowed to take effect (J.S. App. E). The Commission found³ that the existing classification ratings for passenger automobiles had been adopted from the analogous railroad classification ratings in 1936 "without specific evaluation of the transportation characteristics of the commodity" (J.S. App. D4). "In view of limitations upon the capacity of motor-carrier equipment," however, "railroad classification ratings may be unsuitable as applied to transportation by motor vehicle" (*id.* at D11). After a thorough analysis of the evidence concerning the motor carrier transportation characteristics of passenger automobiles (*id.* at D5-D6, D12-D14)—with particular focus upon "the low density characteristics of uncrated automobiles" (*id.* at D12), the "unusual difficulties" involved in "the handling and stowing of automobiles" (*id.* at D13), and the "unusual damage risks" associated with transporting uncrated vehicles (*id.* at D14)—the Commission concluded that "the proposed LTL rating [increase] is warranted under the provisions of the Interstate Commerce Act" (*ibid.*).

³ The Commission's findings are contained in the hearing examiner's recommended report and order (J.S. App. D), which was affirmed and adopted by a Commission review board and subsequently by Division 2 of the Commission, acting as an appellate division (see J.S. App. E1).

The Commission also gave extensive consideration to certain cost data submitted by the Department of Defense purporting to reflect the average costs per shipment involved in 219 LTL shipments of passenger automobiles by the Defense Department in three specified territories between 1966 and 1970 (see *id.* at D6-D7). The Department contended on the basis of the cost data that "no need ha[d] been shown for increased ratings" (*id.* at D8). Although the Commission noted that it "has generally held that cost considerations are entitled to little weight in proceedings involving class ratings for specific commodities" (*id.* at D9), it thoroughly evaluated the cost evidence submitted and discounted its probative value in this proceeding because of several specified "deficiencies" (*ibid.*).⁴

2. The United States thereafter filed an action in the United States District Court for the District of Columbia seeking to set aside, annul, or suspend the

⁴ The Defense Department's *regional* data did not, in the Commission's judgment, support the Department's contentions with respect to the proposed *nationwide* rating increase. "There is no showing as to the proportion of the total traffic, or even of government passenger vehicle shipments, nor does it appear that such regional average costs accurately reflect the unusual circumstances and characteristics of the considered automobile traffic" (J.S. App. D8). In addition, the Department's "cost data does not reflect current cost levels"; "1968 costs are compared with revenue figures based on averages of class rates, some of which were in effect at different periods as late as the middle of 1970" (*ibid.*). The Department's computations consequently "tend to overstate the ratio of revenues to cost under both the present and proposed classification basis" (*ibid.*).

Commission's final order insofar as it allowed the LTL classification rating increase to take effect. A three-judge court was convened pursuant to 28 U.S.C. (1970 ed.) 2325.⁵

The district court suspended the Commission's order and remanded the case to the Commission for further proceedings (J.S. App. A). The court held that, although "[p]laintiff's cost evidence * * * was not entitled to controlling weight in the classification proceeding, * * * the minimal significance attached to this data by the ICC was erroneous" (J.S. App. A7). The court recognized that "[c]lassification proceedings have historically dealt primarily with the qualities and characteristics of commodities, and have accorded little weight to cost and revenue matters" (*id.* at A5-A6); it acknowledged that "[t]here is support for this approach in the statute's legislative history" (*id.* at A6). The court nevertheless formulated a new standard: "In classification proceedings, * * * cost and revenue data cannot be denied proportionate consideration when a substantial issue of cost and revenue is raised"—i.e., "when a claim is raised, with substantiation, that an existing classification suffices to assure a fair, compensatory return to carriers" (*id.* at A11).

Turning to the record in this case, the court found, contrary to the Commission's express findings (see

⁵ The three-judge court review procedure was eliminated by Public Law 93-584, 88 Stat. 1918. Review of Commission orders is now within the jurisdiction of the courts of appeals pursuant to 28 U.S.C. (Supp. V) 2341, 2342.

note 4, *supra*), that the cost data submitted by the Defense Department constituted a "*prima facie* valid sampling of nationwide, representative traffic" and "was essentially contemporaneous with the shipments studied" (*id.* at A8). Whereas the Commission considered the cost evidence seriously deficient, the court found that the evidence "made a *prima facie* showing that the existing classification produced a fair return to carriers" (*ibid.*). The court also disagreed with the Commission's assessment of the evidence concerning the motor carrier transportation characteristics of passenger automobiles (*id.* at A9). The court remanded the case to the Commission "for the development and consideration of cost evidence relating to the classification increase" (*id.* at A11).

ARGUMENT

Appellant's jurisdictional statement presents two questions: (1) whether the district court erred in requiring the Commission to give "proportionate consideration" to cost and revenue data in this classification proceeding; (2) whether the court exceeded the proper scope of its reviewing authority by reweighing the evidence before the Commission and substituting its judgment for that of the Commission as to its probative value. Although we generally support appellant's position on the merits with respect to both issues, we do not believe that plenary review is required with respect to either. In the case of the second issue, however, we think the district court's error was plain, and we accordingly urge that its

judgment be reversed summarily. See *Ralston Purina Co. v. Louisville & N. R. Co.*, No. 75-1015, decided June 14, 1976.

1. Although the Commission disagrees with the district court's newly formulated standard for the consideration of cost and revenue data in classification proceedings, it believes that the decision need not significantly interfere with its administration of the Interstate Commerce Act. The district court held only that the Commission must give "proportionate consideration" to cost and revenue data "when a substantial issue of cost and revenue is raised" (J.S. App. A11). Cost considerations are taken into account even in the transportation characteristics that have traditionally determined a commodity's classification rating (see note 1, *supra*). Accordingly, while we do not agree with the district court's new formulation, the decision appears to require no more than that the Commission give *explicit* consideration to cost data in classification proceedings, and only when a "substantial" cost issue is raised independently of the traditional considerations.

That result, no matter how erroneous it may be from a conceptual standpoint (see J.S. 6-14), does not appear likely, in the Commission's judgment, substantially to affect the Commission's disposition of classification proceedings.* For that reason, we

* Nor will the district court's standard necessarily affect the result in this proceeding. The court remanded the case to the Commission "for the development and consideration of cost evidence relating to the classification increase" (J.S.

do not believe the issue requires plenary consideration in this case.

2. As appellant's jurisdictional statement demonstrates (J.S. 14-16), the district court overstepped the proper bounds of its reviewing authority by substituting its own assessment of the evidence for that of the Commission. The Commission thoroughly considered the cost evidence that was tendered by the Department of Defense and, for reasons fully spelled out in its report, concluded that the evidence did not have substantial probative value (J.S. App. D7-D8). It reached that conclusion independently of its traditional rule that cost considerations are entitled to little weight in classification proceedings (see *id.* at D9).

The district court, while purporting to set aside the Commission's order for "failure to evaluate adequately" the cost and revenue data in the record (J.S. App. A11), in fact simply reexamined the evidence that the Commission found deficient and reached a different conclusion as to the probative weight that should be accorded to it. The Commission discounted the Defense Department's cost data essentially (in the district court's words) for its "lack of typicality and currency" (J.S. App. A7). The district court disagreed; in its judgment the data were sufficiently typical and current to be ac-

App. A11). The Commission remains free on remand to find again, in light of all the evidence submitted, including the cost evidence, that the classification rating increase at issue here is just and reasonable.

corded substantial, even *prima facie*, weight (*id.* at A7-A8).

It is well-established, however, that the weighing of evidence is a task for the Commission, not the reviewing court. *Ralston Purina Co. v. Louisville & N. R. Co.*, *supra*; *Illinois C. R. Co. v. Norfolk & W. R. Co.*, 385 U.S. 57, 69; *Alton R. Co. v. United States*, 315 U.S. 15, 23-24. Here, as in *Ralston Purina*, "[t]he District Court exceeded its function in reweighing the testimony" (slip op. 2).

Although an issue of this sort, essentially limited to the facts of this case, is not, in our view, sufficiently important to warrant plenary resolution by this Court, the case is here on appeal, and we believe the district court's judgment is plainly incorrect. We therefore urge here, as we did in *Ralston Purina*, that the district court's judgment be reversed summarily.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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